

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STATE COMPENSATION
INSURANCE FUND, a Public
Enterprise Fund and Independent
Agency of the State of California,

Plaintiff,

v.

SANA ULLAH KHAN, an individual, et
al.,

Defendants.

Case No.: SACV 12-01072-CJC(JCGx)

ORDER GRANTING DEFENDANTS'
MOTIONS FOR SUMMARY
JUDGMENT

I. INTRODUCTION

Plaintiff State Compensation Insurance Fund (State Fund) brought this action for violation of the federal Racketeering and Corrupt Organizations Act (RICO) statute, 18

1 U.S.C. § 1962(c), and for conspiracy to commit RICO, 18 U.S.C. § 1962(d), against
2 defendants Alexander Zaks, M.D., Sana Khan, M.D., David Holmes, D.C., and Daniel
3 Reyes, D.C.; their various companies (the “Zaks Entities”¹ and the “Khan Entities”²); and
4 State Fund’s own former employee, attorney Bruce Roth. State Fund has also asserted a
5 claim for fraud against Dr. Zaks and the Zaks Entities only. After three years of litigation
6 and extensive discovery, the Zaks Defendants, the Khan Defendants, and Roth have filed
7 three separate motions for summary judgment.³ For the reasons discussed below,
8 Defendants’ motions for summary judgment are GRANTED.

9 10 **II. BACKGROUND**

11
12 In 2001, Dr. Zaks decided to form several businesses (the Zaks Entities) in
13 California’s Central Valley that focused on providing medical treatment to the region’s
14 agricultural workers. (Dkt. 258, Zaks Defs.’ Statement of Uncontroverted Facts (SUF)
15 ¶ 1.) Dr. Zaks, along with Drs. Holmes and Reyes, formed Accident Help Line Medical
16 Group (AHL) at that time. (SUF ¶ 2.) AHL was staffed with doctors, chiropractors, and
17 other medical professionals, and focused on patients with chronic work-related injuries
18 and associated pain. (*Id.*) Dr. Zaks also established Millcreek Surgery Center and Alta
19 Surgery Center, ambulatory surgery centers where doctors performed outpatient surgery
20 procedures. (SUF ¶ 2.) Dr. Zaks and a partner also owned Reliable Medical Supply,
21 which provided medical equipment to multiple medical providers, including AHL. (SUF

22
23 ¹ The Zaks Entities are comprised of defendants Accident Help Line Medical Group, Inc.; Alexander
24 Zaks, M.D., Inc.; Alta Surgery Center Medical Clinic, Inc.; Technical Surgery Support Medical Clinic
25 Services, Inc.; Reliable Medical Supply, LLC; Valley Interpreting Services, LLC; and Comprehensive
26 Outpatient Surgery Center, LLC.

26
27 ² The Khan Entities are comprised of Physicians Mobile Medical Group, Inc.; Precision Care Medical
28 Group; True Imaging Medical Group; Windstar Medical Associates; Crescent Diagnostic Medical
Group, Inc.; Crescent Comprehensive Management, Inc.; and Mobile Medical Imaging Xperts.

28
³ The Zaks Entities together with Dr. Zaks, Dr. Holmes, and Dr. Reyes are the “Zaks Defendants”
throughout. The Khan Entities together with Dr. Khan are the “Khan Entities” throughout.

¶ 2.) In 2003 Dr. Zaks and partners also created Valley Interpreting, a translation service for patients who spoke limited or no English. (SUF ¶ 2.)

Dr. Khan owned the Khan Entities, which conducted diagnostic testing for AHL. (Dkt. 298-1, State Fund’s Compendium of Testimony (CT) Ex. 18 at 156:9-157:5.) Dr. Khan and Dr. Zaks engaged in some cross marketing of their respective services to attorneys representing clients with workers’ compensation issues. (CT Ex. 18 at 95:5-24.) Drs. Zaks and Khan also jointly trained AHL staff to follow certain treatment protocols, which required that particular treatments and diagnostic testing be ordered for all AHL patients. (Dkt. 294, State Fund’s Statement of Additional Material Facts (SF) #22.)

State Fund is the largest provider of workers’ compensation insurance in California and was the carrier for a substantial percentage of AHL’s patient claims, as well as other claims submitted by the Zaks Entities and Khan Entities. (SUF ¶ 4.) Beginning in 2002, State Fund began denying many of the claims the Zaks Entities and Khan Entities submitted to it. (SUF ¶ 3.) Following State Fund’s nonpayment, the Zaks Entities and the Khan Entities filed claims (known as “liens”) with the Workers Compensation Appeals Board (WCAB), which sought payment on the claims that State Fund had rejected. (SF #74.) From 2002 to 2005, the Zaks Entities filed over 1,200 liens seeking payment from State Fund. (SUF ¶ 5.)

Defendant Bruce Roth, then a senior attorney with State Fund, was assigned to defend State Fund against the Zaks Entities’ WCAB liens. Suspecting possible fraud, Roth led an investigation of the Zaks Entities by no later than 2004. (SUF ¶ 7.) With State Fund’s authorization, Roth made a criminal referral of the case to California’s Department of Insurance (CDI). (*Id.*) Based on Roth’s referral and other insurance companies’ reports, CDI initiated a fraud investigation of AHL that it dubbed “Operation

1 Chicken.” (Dkt. 300-1, Pl.’s Compendium of Exhibits (CE) Ex. 9.) CDI’s investigation
2 led to indictments of some AHL employees (none of whom are defendants in this case),
3 but the indictments were eventually dismissed. (SUF ¶ 7.)
4

5 State Fund has introduced evidence that patients at AHL and other Zaks and Khan
6 Entities received unnecessary medical tests that were not reflective of their individual
7 medical conditions. (SF #31.) The evidence was generated largely through Roth’s work
8 and Operation Chicken, which among other things entailed sending undercover
9 investigators (masquerading as patients) to AHL and interviewing people who had
10 worked at AHL. Testimony in the record indicates that Dr. Zaks, the other owners of
11 AHL, and Dr. Khan pressured AHL chiropractors and staff to meet quotas for treatments,
12 tests, and services. (SF ##11, 33.) One chiropractor who worked at AHL in 2001 and
13 2002 listed numerous flaws he perceived in the treatment patients received there, and
14 stated that the patients were moved through the treatment programs “like cattle.” (Dkt.
15 299-7, Pl.’s Compendium of Declarations (CD) Ex. 16, ¶ 7 and Ex. A at 25.) An AHL
16 patient expressed a similar sentiment, stating that “[b]eing a patient at Accident Helpline
17 reminded [him] of going to Chuck E Cheese[’]s where you put a quarter in the machine,
18 ride the horse, and leave.” (Dkt. 299-8, CD Ex. 23 ¶ 5.) Additional testimony indicates
19 that Drs. Zaks, Holmes, and Reyes instructed AHL chiropractors and clinic staff to refer
20 every patient to the Khan Entities for nerve conduction testing and MRIs, whether or not
21 they were necessary. (SF #51-58.) State Fund has also presented other evidence from
22 patients, employees, documents, and experts tending to suggest that various Zaks Entities
23 and Khan Entities overbilled and provided substandard or unnecessary services from
24 2002 through 2006. (SF ##31-72.)
25

26 In January 2006, Roth filed a petition with the WCAB to consolidate (for the
27 purpose of litigating common issues) the Khan Entities’ and Zaks Entities’ 1,200+ liens
28 against State Fund. (Dkt. 300-2, CE Ex. 11.) State Fund’s petition for consolidation

1 asserted wide-ranging allegations of “systemic” fraud by the Zaks Defendants and Khan
2 Defendants as defenses to the lien claims. (*Id.*) Early on, the proceeding was ordered
3 stayed with respect to the Khan Entities. (SF #79.) From 2006 to 2009, Roth represented
4 State Fund against the Zaks Entities in the WCAB matter. In 2007, the parties stipulated
5 to resolve the WCAB matter in binding arbitration. (SUF ¶ 11.)

6
7 In October 2009, after losing on several issues before the arbitrator,⁴ Roth settled
8 the consolidated case with the Zaks Defendants without first gaining the approval of his
9 manager at State Fund or State Fund’s claims department. (SUF ¶ 19.) Neither Roth’s
10 management nor State Fund’s claims department had any indication that settlement was
11 imminent: everyone at State Fund aside from Roth was under the impression that the case
12 would continue to be litigated and that it would be appealed in the event of an
13 unfavorable judgment. (SF ##99-105.) Once Roth’s superiors at State Fund learned of
14 the settlement (memorialized in the 2009 “Settlement Memorandum”), they removed
15 Roth from the case, contacted the Zaks Entities, and disavowed the settlement on the
16 basis that Roth lacked authority to enter into it. (SUF ¶ 27.)

17
18 At this time, State Fund brought in outside counsel from the law firm
19 Sonnenschein Nath & Rosenthal (now known as Dentons LLP) to litigate the
20 enforceability of the Settlement Memorandum. (*Id.*) State Fund and Sonnenschein
21 investigated the circumstances leading up to Roth’s signing of the 2009 Settlement
22 Memorandum. (SUF ¶ 28.) Roth was interviewed separately by his supervisor, by

23
24 ⁴ The parties sharply dispute the effect that these losses would have had on the WCAB arbitration, had it
25 continued. The Zaks Defendants take the position that the arbitrator’s rulings severely undercut State
26 Fund’s case. State Fund takes the position that it was poised to appeal the unfavorable rulings to the
27 WCAB and that the issues most favorable to it remained undecided at the time Roth settled the case in
28 October 2009. (Dkt. 291, State Fund’s Statement of Genuine Disputes in Support of Opposition to the
Zaks Defendants’ Motion ¶¶ 12-17.) As this is the Zaks Defendants’ motion for summary judgment, the
Court will credit State Fund’s position that its prospects of prevailing in the WCAB action were not as
remote as the Zaks Defendants assert.

1 Sonnenschein attorneys, and by a second State Fund attorney. (SUF ¶ 28.) At State
2 Fund's request, Roth provided written explanations of his actions. (SUF ¶ 30.) Roth
3 indicated that he was "frustrated/depressed in the way the case was proceeding." (*Id.*)
4 He also stated that the arbitrator "was going to find against [State Fund] on all issues"
5 and would "award interest, penalties, and attorney's fees to the lien claimants." (SUF
6 ¶ 30.)⁵ Roth also indicated that "many of his witnesses would not testify because of the
7 possibility of self-incrimination." (Dkt. 291, SGD ¶ 30e.)

8
9 State Fund compelled Roth to resign in March 2010. (SUF ¶ 35.) In April 2010,
10 with the help of outside counsel and without Roth's involvement, State Fund entered into
11 superseding settlement agreements with the Zaks Entities (the 2010 "Settlement
12 Agreements")⁶ for substantially the same amount of money as provided for in the 2009
13 Settlement Memorandum. (SUF ¶ 33.) State Fund asserts that it did so in large part out
14 of concern that the WCAB might have enforced the original 2009 Settlement
15 Memorandum between Roth and the Zaks Entities based on Roth's ostensible authority to
16 bind State Fund. (SF ##144, 149.) The 2010 Settlement Agreement between State Fund
17 and the Zaks Entities released both State Fund and the Zaks Entities from all claims they
18 had against each other up until the time of that agreement. (Dkt. 300-9, CE Ex. 70, AHL
19 Settlement Agreement at 2.)⁷ The 2010 Settlement Agreements were submitted to Chief
20 Judge Kahn of the WCAB, who signed orders approving each of them and directing each
21 of the Zaks Entities to remove its liens. (SUF ¶ 41.)

22
23
24 ⁵ State Fund contests the accuracy of these statements and notes that they contradict earlier positive
25 accounts of the litigation Roth gave to his colleagues, but acknowledges that Roth provided them as an
26 explanation for his actions. (Dkt. 291, Pl.'s Statement of Genuine Disputes in Support of Opposition to
27 the Zaks Defendants' Motion for Summary Judgment (SGD) ¶ 30e.)

28 ⁶ Each Zaks Entity entered into its own separate agreement with State Fund. (CE Exs. 70-77.)

⁷ This citation is to language in the 2010 Settlement Agreement between State Fund and AHL. (CE Ex.
70.) The Settlement Agreements between State Fund and the other Zaks Entities all contain identical
language. (CE Exs. 71-77.)

1 Soon after the 2010 Settlement Agreements were signed (without Roth's
2 involvement), Roth took a job with an entity named Global Holdings, Inc. (SUF ¶ 42.)
3 The owner of Global Holdings, Sam Solakyan, was friendly with both Drs. Zaks and
4 Khan, and Dr. Khan was the Chief Medical Officer of Global Holdings at the time. (SF
5 ##132, 134, 175.) Before learning of Roth's new employment, State Fund believed that
6 Roth had made a "colossal error" by entering into the Settlement Memorandum, but not
7 that he had committed fraud. (SF #168.) After learning that Dr. Khan also worked for
8 Roth's new employer, however, State Fund informed CDI of the situation and launched a
9 fraud investigation concerning Roth's decision to settle the Zaks Entities' lien claims.
10 (SF ##179-80.) In April 2011, State Fund was notified that CDI was actively
11 investigating the matter with the FBI for a possible criminal prosecution. (SF #181.)
12 There is no indication in the record that any criminal charges were ever filed as a result of
13 that investigation.

14
15 In 2012, State Fund filed the instant lawsuit, which asserts a course of RICO
16 activity against the Defendants, starting with the allegedly fraudulent medical claims
17 submitted to State Fund as early as 2002, running through the alleged quid pro quo
18 concerning Roth, and including an August 2011 lawsuit—which has since been
19 dismissed—that the Khan Entities filed against State Fund to assert claims State Fund
20 contends had already been sold to a third party collection company. (SF #185-86.)

21 22 **III. LEGAL STANDARD**

23
24 The Court may grant summary judgment on "each claim or defense—or the part of
25 each claim or defense—on which summary judgment is sought." Fed. R. Civ. P. 56(a).
26 Summary judgment is proper where the pleadings, the discovery and disclosure materials
27 on file, and any affidavits show that "there is no genuine dispute as to any material fact
28 and the movant is entitled to judgment as a matter of law." *Id.*; see also *Celotex Corp. v.*

1 *Catrett*, 477 U.S. 317, 322 (1986). The party seeking summary judgment bears the initial
2 burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp.*,
3 477 U.S. at 325. A factual issue is “genuine” when there is sufficient evidence such that
4 a reasonable trier of fact could resolve the issue in the nonmovant’s favor. *Anderson v.*
5 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is “material” when its resolution
6 might affect the outcome of the suit under the governing law. *Id.* “Factual disputes that
7 are irrelevant or unnecessary will not be counted.” *Id.* at 249.

8
9 Where—as here—the nonmovant will have the burden of proof on an issue at trial,
10 the moving party may discharge its burden of production by either (1) negating an
11 essential element of the opposing party’s claim or defense, *Adickes v. S.H. Kress & Co.*,
12 398 U.S. 144, 158-60 (1970), or (2) showing that there is an absence of evidence to
13 support the nonmoving party’s case, *Celotex Corp.*, 477 U.S. at 325. Once this burden is
14 met, the party resisting the motion must set forth, by affidavit, or as otherwise provided
15 under Rule 56, “specific facts showing that there is a genuine issue for trial.” *Anderson*,
16 477 U.S. at 256. A party opposing summary judgment must support its assertion that a
17 material fact is genuinely disputed by (i) citing to materials in the record, (ii) showing the
18 moving party’s materials are inadequate to establish an absence of genuine dispute, or
19 (iii) showing that the moving party lacks admissible evidence to support its factual
20 position. Fed. R. Civ. P. 56(c)(1)(A)-(B). But the opposing party must show more than
21 the “mere existence of a scintilla of evidence”; rather, “there must be evidence on which
22 the jury could reasonably find for the [opposing party].” *Anderson*, 477 U.S. at 252.

23
24 In considering a motion for summary judgment, the court must examine all the
25 evidence in the light most favorable to the non-moving party, and draw all justifiable
26 inferences in its favor. *Id.* at 285. But “[w]here the record taken as a whole could not
27 lead a rational trier of fact to find for the non-moving party, there is no genuine issue for
28

1 trial” and summary judgment should be granted. *Matsushita Elec. Indus. Co., Ltd. v.*
2 *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal quotation marks omitted).

3 4 **IV. ANALYSIS**

5 6 **A. The Zaks Defendants’ Motion for Summary Judgment**

7
8 State Fund has presented a substantial amount of evidence in support of its
9 allegations that the Zaks Entities performed unnecessary medical procedures and engaged
10 in billing fraud between 2002 and 2006. Nonetheless, that alleged fraud is not the central
11 issue here. State Fund—already in possession of that same evidence—entered into the
12 2010 Settlement Agreements, which unequivocally released all claims arising out of
13 those procedures and billings. Accordingly, the central issue before the Court is *not* the
14 possible underlying merit of those fraud claims, but rather whether the Zaks Entities and
15 Roth committed any act of fraud with respect to the 2010 Settlement Agreements that
16 would undo and rescind State Fund’s release of those claims. State Fund entered into the
17 new 2010 Settlement Agreements with the Zaks Defendants six months after repudiating
18 the 2009 Settlement Memorandum. The full text of the Settlement Agreements’ release
19 states:

20 21 **RELEASE OF CLAIM BY PARTIES**

22 Except for the liabilities and obligations arising out of this Agreement, the
23 Lien Claimants and State Fund, and each of them, hereby release and forever
24 discharge one another along with along with [sic] their respective officers,
25 directors, managers, members, employees, agents, attorneys, and insurers,
26 from any and all claims, demands, actions, liabilities, obligations, accounts,
27 expenses, attorneys’ fees, and causes of action of every kind and nature, in
28 law, in equity, or otherwise, whether known or unknown, which State Fund

1 now have or may have had against the Lien Claimants or which the Lien
2 Claimants now have or ever had against State Fund arising out of the
3 Compromised Claims or which, or which [sic] may hereafter accrue.

4
5 (CE Ex. 70 at 2.)
6

7 The Zaks Defendants argue that the civil RICO claims and state fraud claim
8 alleged against them in this litigation must be dismissed because both were covered by
9 this broad release. State Fund counters with two arguments about why the release in the
10 Settlement Agreements does not bar the claims outright. First, State Fund argues that
11 even if the release is enforceable for claims against the “Lien Claimants”—the Zaks
12 Entities with lien claims against State Fund—it is by its own terms not enforceable for
13 claims against the Zaks Defendants who are *individuals*. Second, State Fund argues that
14 the 2010 Settlement Agreements are in their entirety subject to rescission because they
15 were obtained through the Zaks Defendants’ fraud in violation of the agreements’ “no
16 fraud” clause.⁸ Neither argument is persuasive.

17
18 **1. The Applicability of the Release in the 2010 Settlement Agreements**
19 **to Individual Zaks Defendants**
20

21 State Fund does not dispute that the Settlement Agreements’ release, if
22 enforceable, would bar the civil RICO claims and the fraud claim against the Zaks
23 Entities. State Fund does *not*, however, concede that the release in the Settlement
24 Agreements releases Dr. Zaks and his partners, Dr. Reyes and Dr. Holmes (the
25 “Individual Zaks Defendants”) from those claims. State Fund argues that absent the
26

27
28 ⁸ The 2010 Settlement Agreements include a warranty that the parties “were not aware of any duress, menace, fraud, coercion, or undue influence which has caused any Party to enter into this Agreement.” (Dkt. 300-9, CE Ex. 70, AHL Settlement Agreement at 2.)

1 releases, the Individual Zaks Defendants would be subject to liability for the claims at
2 issue here in two capacities: (1) as owners, officers, and directors of the Zaks Entities
3 (their “derivative liability”), and (2) in an individual capacity for their own personal
4 conduct in defrauding State Fund or causing it financial harm through violations of the
5 RICO statute (their “individual liability”). The language of the release—according to
6 State Fund—pertains only to derivative liability, not individual liability.

7
8 State Fund argues that though the release includes the Zaks Entities’ “respective
9 officers, directors, managers, members, employees, agents, attorneys, and insurers,” it
10 only releases them from “any and all claims . . . which State Fund now ha[s] or may have
11 had *against the Lien Claimants* arising out of Compromised Claims.” (CE Ex. 70 at 2
12 (emphasis added).) The Lien Claimants, as defined by the Settlement Agreements, are
13 the Zaks Entities, not the Individual Zaks Defendants. (*See, e.g.*, CE Ex. 70 at 1.) And—
14 the argument goes—because the releases only release the Zaks Defendants from claims
15 that State Fund had “against the Lien Claimants” (that is, against the Zaks *Entities*), State
16 Fund did not release its claims against the Individual Zaks Defendants brought against
17 them in their individual capacities rather than derivative to claims against the Zaks
18 Entities.

19
20 Contractual releases operate by the same principles as any other contractual
21 agreement. *Marder v. Lopez*, 450 F.3d 445, 449 (9th Cir. 2006). Interpretation of a
22 contract, including a release, is governed by the language of the contract “if the language
23 is clear and explicit, and does not involve an absurdity.” *See* Cal. Civ. Code. § 1638;
24 *Rodriguez v. Oto*, 212 Cal. App. 4th 1020, 1027-28 (2013).

25
26 Here, the language of the release is clear and supports the Zaks Defendants’
27 position that the release applies to both the Zaks Entities and to the Individual Zaks
28 Defendants for any acts undertaken in their capacities as agents of the Zaks Entities. The

1 release clause in the Settlement Agreements releases the Zaks Entities—“Lien
2 Claimants,” in the language of the release—and “**their respective officers, directors,**
3 **managers, members, employees, agents, attorneys, and insurers from any and all**
4 **claims** . . . which State Fund now has or may have had against the Lien Claimants.”
5 (emphasis added) In this case, State Fund is bringing the same civil RICO claims and
6 fraud claim against *both* the Zaks Entities and the Individual Zaks Defendants. Those
7 claims are therefore undeniably claims that State Fund “may have had against the Lien
8 Claimants.” Accordingly, the plain language of the release releases *both* the Lien
9 Claimants and the Individual Zaks Defendants (because they are officers, employees, and
10 agents of the Lien Claimants) from the claims. State Fund’s argument is a nonstarter.
11

12 State Fund’s preferred reading also defies common sense: it leads to the absurd
13 result of Dr. Zaks accepting a release of the Zaks Entities’ potential liability for the
14 allegedly fraudulent liens before the WCAB, while leaving open the possibility that he
15 and the other Individual Zaks Defendants could later be sued and held liable for their
16 actions concerning those same liens, which they filed on the Zaks Entities’ behalf. This
17 result would have left Dr. Zaks himself and the other individuals exposed to millions of
18 dollars in liability in the event they lost a subsequent lawsuit brought by State Fund. Dr.
19 Zaks would have obtained no peace of mind by accepting such a settlement, nor as a
20 practical matter would the Zaks Entities. If State Fund did file a suit against the
21 Individual Zaks Defendants based on the liens they filed on behalf of the Zaks Entities,
22 the Zaks Entities would have to indemnify the Individual Zaks Defendants for their legal
23 fees and costs in the event the Individual Zaks Defendants prevailed in the suit. *See Cal.*
24 *Corp. Code* § 317(d). Even should the Individual Zaks Defendants lose that suit, the
25 Zaks Entities might nonetheless be required to indemnify them against the judgment. *See*
26 *id.* §§ 317(e) and (g). The Zaks Entities themselves would therefore receive very little
27 protection under State Fund’s interpretation of the release. Indeed, the benefits of the
28 release would be illusory from the Zaks Defendants’ standpoint. But parties routinely

1 negotiate releases that include releases for their agents in order to avoid this potential
2 liability. And that is exactly what Dr. Zaks did here for himself and the other Individual
3 Zaks Defendants. Despite State Fund's urging to do so, it is not the Court's place to
4 rewrite the terms of a release. If the language of the release does not comport with State
5 Fund's preferred result, State Fund has no one to blame but itself. It never should have
6 agreed to the broad coverage of the release. In any event, the Court will not force the
7 Zaks Defendants to accept a deal they did not—and never would—make. Simply stated,
8 the release covers claims against all the Zaks Defendants, both the entities and the
9 individuals.⁹

10 11 **2. State Fund's Allegations of Fraud**

12
13 In its argument for rescission of the 2010 Settlement Agreements, State Fund
14 advances three distinct theories of how the Zaks Defendants violated the Settlement
15 Agreements' "no fraud" clause: (1) that the underlying liens at issue in the WCAB
16 litigation were the product of the fraudulent scheme they devised and executed; (2) that
17 Dr. Zaks colluded with Roth to defraud State Fund in connection with the 2009
18 Settlement Memorandum, and that the Settlement Memorandum drove State Fund to
19 enter the 2010 Settlement Agreements; and (3) that the Zaks Defendants connived to take
20 advantage of State Fund when they sought to enforce the Settlement Memorandum while
21 knowing that Roth signed it without State Fund's consent and against its wishes. (Pl.'s
22
23

24
25 ⁹ Though State Fund argues to the contrary, the Zaks Defendants' preferred reading of the release takes
26 into account the limiting language "against the Lien Claimants" because it ensures that the release will
27 only apply to the conduct of the Individual Zaks Defendants while they were acting within the scope of
28 their agency, as any tort committed by any of them outside the scope of their agency could not be
imputed to a Lien Claimant. In this case, the alleged acts of fraud committed by the Individual Zaks
Defendants would fall well within the scope of their agency, as those acts were done in furtherance of
the fraudulent billing and settlements that increased the Lien Claimants' earnings.

1 Opp’n Br. at 61.)¹⁰ A close look at the relevant law and evidence in the record, however,
2 indicates that a reasonable jury could not find in State Fund’s favor under any of the three
3 theories.

4
5 **a. Fraud in the Underlying Lien Claims**
6

7 State Fund’s argument that rescission is warranted based on fraud in connection
8 with the underlying lien claims themselves fails as a matter of law. Here, the WCAB
9 entered judgment on State Fund’s claims when it approved the 2010 Settlement
10 Agreements. Despite State Fund’s assertions to the contrary, under California law, a
11 court may only rescind a judgment based on fraud when that fraud is extrinsic to the
12 subject matter of the contract—that is, when the fraud pertains to something outside the
13 contract that plays a part in inducing a party to enter into it. *See Eichman v. Fotomat*
14 *Corp.*, 147 Cal. App. 3d 1170, 1175 (1983) (“Fraud by a party will not undermine the
15 conclusiveness of a judgment unless the fraud was extrinsic, i.e., it deprived the opposing
16 party of the opportunity to appear and present his case.”) Examples of extrinsic fraud
17 include “failure to give notice of the action to the other party,” or “convincing the other
18 party not to obtain counsel because the matter will not proceed (and it does proceed).”
19 *Heyman v. Franchise Mortgage Acceptance Corp.*, 107 Cal. App. 4th 921, 926 (2003).
20 Fraud is intrinsic, on the other hand, “when the party has been given notice of the action
21 and has had an opportunity to present his case and to protect himself from any mistake or
22 fraud of his adversary, but has unreasonably neglected to do so.” *Id.* “Such a claim of
23 fraud goes to the merits of the prior proceeding which the moving party should have
24 guarded against at the time.” *Id.* Here, the liens are intrinsic to the 2010 Settlement
25 Agreements—they were the very thing being settled. Under California law, therefore,
26

27 ¹⁰ State Fund’s briefing asserts a fourth category of fraud, which concerns the alleged quid pro quo
28 between Dr. Zaks and Roth, but the Court believes this falls squarely within (2), which concerns alleged
collusion between Zaks and Roth. At oral argument, State Fund acknowledged that these two assertions
collapse into each other.

1 fraud underlying or intrinsic to the lien claims themselves provides no basis for
2 rescinding the Settlement Agreements and the WCAB judgment resulting from them.

3
4 State Fund asserts, however, that the rules for workers' compensation judgments
5 are different. For support, State Fund cites *Johnson v. Workmen's Comp. Appeals Bd.*,
6 which states that "[u]nlike the rule as to judgments, intrinsic fraud or mistake will suffice
7 to set aside a workmen's compensation compromise or award." 2 Cal. 3d 964, 975
8 (1970) (internal citations removed) (citing *Brunski v. Industrial Acc. Com.*, 203 Cal. 761,
9 764-66 (1928)). *Johnson*, however, concerns the WCAB's ability to overturn its *own*
10 compromise based on intrinsic fraud, not a court's ability to do so. Furthermore the
11 portion of *Brunski* that *Johnson* cites for support concerns the statutory window (then 245
12 weeks) during which the Industrial Accident Commission could overturn a past decision
13 for "good cause shown." *Brunski v. Indus. Acc. Comm'n*, 203 Cal. 761, 764 (1928)).
14 There, the court concluded that intrinsic fraud constituted the "good cause" necessary for
15 the Commission to reopen the matter within the window permitted by statute. *Id.* at 765.
16 This provides no support for the notion that courts (as opposed to the WCAB itself) can
17 overturn WCAB judgments because of intrinsic fraud. Further, it suggests that the
18 WCAB cannot overturn its own decision—even if presented with evidence of intrinsic
19 fraud—once the statutory window in which it may reconsider its own decisions has
20 closed. More recent caselaw confirms these limitations. The WCAB's "jurisdiction to
21 rescind, alter, or amend" a judgment (including a judgment based on a compromise and
22 release) terminates "five years after the date of injury," at which point "an award may be
23 set aside only upon a showing of . . . 'extrinsic' fraud or mistake." *Smith v. Workers'*
24 *Comp. Appeals Bd.*, 168 Cal. App. 3d 1160, 1169-70 (1985).

25
26 The liens at issue in the instant case date back to 2006 and earlier, well over five
27 years ago. Because any fraud related to them would be intrinsic rather than extrinsic,
28 they provide no basis even before the WCAB itself to overturn the Settlement

1 Agreements and resulting WCAB judgment in this case. The WCAB has not (and now
2 cannot) alter the judgment it entered based on the 2010 Settlement Agreements. And
3 State Fund has provided no caselaw indicating that this Court may in this case exempt
4 itself from the clear general rule that extrinsic fraud is required to rescind a judgment
5 under California law. State Fund must therefore look to extrinsic fraud concerning the
6 Settlement Agreements themselves.

7
8 **b. Collusion between Bruce Roth and the Zaks and Khan**
9 **Defendants**
10

11 State Fund argues that even if extrinsic fraud were a requirement for rescission of a
12 WCAB settlement, the 2010 Settlement Agreements can be rescinded because there was
13 in fact extrinsic fraud in this case—the alleged collusion and quid pro quo between Roth
14 and the Zaks Defendants. State Fund asserts that this fraud resulted in the signing of the
15 unfavorable 2009 Settlement Memorandum, and that the Settlement Memorandum’s
16 existence compromised State Fund’s ability to negotiate the 2010 Settlement Agreements
17 because it did so facing the looming possibility that the Settlement Memorandum itself
18 would remain in effect absent a superseding agreement.

19
20 To prove the existence of a conspiracy to commit fraud under California law, a
21 plaintiff must show “(1) the formation and operation of the conspiracy, (2) wrongful
22 conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful
23 conduct.” *Kidron v. Movie Acquisition Corp.*, 40 Cal. App. 4th 1571, 1581 (1995). “The
24 *sine qua non* of a conspiratorial agreement is the knowledge on the part of the alleged
25 conspirators of its unlawful objective and their intent to aid in achieving that objective.”
26 *Id.* at 1582. “Conspiracies cannot be established by suspicions,” and “[m]ere association
27 does not make a conspiracy.” *Id.*
28

1 Here, no direct evidence would enable a reasonable trier of fact to conclude that a
2 conspiracy between Roth and any defendant existed. Roth, Solakyan, Dr. Khan, Dr.
3 Zaks, and Dr. Zaks's two attorneys have all testified or declared under penalty of perjury
4 that there was no collusion and that there was no offer of employment or any other
5 consideration given to Roth in exchange for his negotiation and approval of the 2009
6 Settlement Memorandum. (SUF ¶¶ 58-59.) No documentary evidence of any kind
7 directly establishes impermissible concerted action between Roth and any other party,
8 and no other witness has testified to any conspiracy.

9
10 Nonetheless, evidence of a conspiracy "need not be explicit, but may be inferred
11 from circumstantial evidence." *United States v. Melchor-Lopez*, 627 F.2d 886, 891 (9th
12 Cir. 1980). Inferences of the existence of such an agreement may be drawn if there is
13 "concert of action, [with] all the parties working together understandingly, with a single
14 design for the accomplishment of a single purpose." *United States v. Monroe*, 552 F.2d
15 860, 862-63 (9th Cir. 1977). But where—as here—a plaintiff attempts to prove a
16 conspiracy though an inference rather than direct evidence, the inference must be
17 "reasonable." *Aguilar v. Atl. Richfield Co.*, 25 Cal. 4th 826, 861-67 (2001), as modified
18 (July 11, 2001); *see also Goldstrass v. Sec.-First Nat. bank of Los Angeles*, 149 Cal App.
19 2d 808, 810-21 (1957) (inferences of conspiracy must be more than "speculative and
20 conjectural"). An inference of conspiracy from circumstantial evidence is reasonable
21 only if the evidence "implies unlawful conspiracy [is] *more likely than*" independent
22 action. *Aguilar*, 25 Cal. 4th at 857; *see also Matsushita Elec. Indus. Co. v. Zenith Radio*
23 *Corp.*, 475 U.S. 574, 588 (1986) (quoting *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465
24 U.S. 752, 764 (1984) (to show conspiracy, a plaintiff "must present evidence 'that tends
25 to exclude the possibility' that the alleged conspirators acted independently.")).

26
27 State Fund asserts that Roth colluded with the Zaks Defendants in exchange for his
28 later employment at Global Holdings, a firm owned by Sam Solakyan, a friend of Drs.

1 Zaks and Khan. But though there are open questions about why Roth entered into the
2 Settlement Memorandum with the Zaks Entities, the fact remains that after three years of
3 litigation and extensive discovery, State Fund has found no evidence of contact between
4 Roth and the Zaks Defendants outside of the one meeting where the Settlement
5 Memorandum was signed in the presence of the Zaks Defendants' counsel. Nor has State
6 Fund found evidence tending to indicate that Dr. Zaks, Dr. Khan, or anyone else directed
7 Sam Solakyan to hire Roth at Global Holdings. After methodically reviewing the
8 evidence that the parties presented and holding an extended motion hearing on the
9 subject, the Court concludes that State Fund has failed to provide sufficient evidence for
10 a reasonable juror to conclude that it was more likely than not that Roth colluded with
11 any of the defendants by agreeing to settle the case in exchange for being hired at Global
12 Holdings.

13
14 To support its theory of collusion involving a quid pro quo, State Fund has directed
15 the Court to the following facts: (1) Roth did not have settlement authority to enter the
16 Settlement Memorandum; (2) Roth had detailed settlement negotiations with Zaks
17 Defendants without telling others at State Fund and while those others were under the
18 impression that the case would continue until judgment; (3) Roth mentioned his
19 upcoming retirement several times during settlement negotiations; (4) the 2009
20 Settlement Memorandum was structured to make multiple small payments so the deal
21 would not require management approval; (5) Roth initially concealed the settlement from
22 his supervisors; (6) there was ongoing contact between Solakyan and Dr. Zaks and
23 Solakyan and Dr. Khan; (7) Dr. Zaks made several personal loans to Dr. Khan; and (8)
24 Roth was eventually employed at Global Holdings.

25
26 But these data points are not sufficient to permit a jury to infer collusion. At best,
27 these facts demonstrate inappropriate unilateral action on Roth's part, not concerted
28

1 activity with the Zaks Defendants. There are also many holes and gaps in the facts relied
2 on by State Fund to prove concerted activity by Roth and the Zaks Defendants.

3
4 State Fund asserts that during the summer of 2009 Roth had settlement discussions
5 with the Zaks Defendants, yet did not disclose that he was in settlement talks to either
6 State Fund's claims personnel or his own supervisors. (SF ##86-87.) State Fund further
7 asserts that during these settlement talks and in related emails from that period, Roth
8 mentioned his retirement several times. State Fund characterizes this as a thinly-veiled
9 attempt to obtain post-retirement employment through Dr. Zaks. State Fund has not,
10 however, cited any testimony indicating that Roth expressed an interest in post-retirement
11 *employment*. The Zaks Defendants' counsel indicated that he thought Roth's comments
12 about retirement were an effort to get the Zaks Defendants to settle quickly. (SF #89.) In
13 one email to the Zaks Defendants' counsel, Roth indicated that "State Fund has provided
14 me with the authority to propose the following as a way to avoid continuing the litigation
15 and reasons given the WCAB [sic] past delays that will extend the case well past my
16 retirement date." (CE Ex. 43.) Dr. Zaks's lawyer explained in deposition testimony that
17 Roth mentioned his retirement, "in my mind, for the purpose of saying to us there will be
18 new counsel coming into this case, and it's going to start up all over again, and it's going
19 to take years. And I think it was just—it was a negotiating strategy." (CT Ex. 34 at
20 126:3-21.) Because nothing in the record indicates that Roth ever expressed interest in
21 post-retirement employment, his comments that he would retire soon do little to support
22 State Fund's theory that he was seeking out an illicit benefit from the Zaks Defendants.

23
24 Nor does Roth's obfuscatory conduct surrounding the negotiation and execution of
25 the Settlement Memorandum demonstrate a conspiracy with the Zaks Defendants. On
26 August 17, 2009, Roth met with State Fund claims management personnel—who would
27 typically be consulted before any settlement—and conveyed the Zaks Defendants'
28 demands. The Senior Claims Manager and others in attendance deemed the demands to

1 be “outrageous” and “ridiculous.” When deposed, the Senior Claims Manager testified
2 that Roth “scoffed” at the demands along with the rest of the meeting attendees and
3 appeared to be in agreement with them.” (SF ##92-93.) The decision was made at that
4 meeting to go “gung ho” and “fight this as a company.” (State Fund Compendium of
5 Transcripts (“CT”) Ex. 26 at 179:8-15.) After the August 2009 meeting, Roth reported to
6 Dr. Zaks’s counsel that he was “having a difficult time with claims management due to
7 the fact that the proposed settlement is ‘millions’ of dollars” and that he had “a concern
8 about the management approvals necessary for the resolution of these cases.” (Dkt. 300-
9 3, CE Ex. 32.) In light of these concerns, the Zaks Entities’ Counsel pointed out to Roth
10 in an email that the reason the settlement figure was in the millions of dollars was that
11 1,200 cases had been consolidated and suggested that “if State Fund simply makes the
12 payments related to the 1200+ specific cases, that virtually all will be settled for less than
13 reserves, which we assume would not have a management approval issue.” (*Id.*)
14

15 In early October 2009, Roth told State Fund legal and claims representatives that
16 he was confident State Fund was going to win upcoming hearings in the arbitration. (SF
17 #99.) Around October 7, 2009, Roth told his supervisor that he was going to meet the
18 Zaks Defendants to discuss the upcoming arbitration hearings—he did not disclose that
19 the purpose of this meeting was actually to negotiate a final settlement. (SF ##100-01.)
20 That week, another State Fund supervising attorney asked Roth for an update on cases
21 pertaining to ambulatory service centers, a subset of the cases in dispute with the Zaks
22 Defendants. (SF #102.) Specifically, she asked for the current demand and offer, the
23 current status of the cases, a description of settlement efforts to date, and an assessment
24 of whether settlement discussions would be fruitful in the event that they had not yet been
25 attempted. (*Id.*) Roth indicated that he was busy, but that he would get her a response
26 that Friday, October 9, the day he signed the Settlement Memorandum. (*Id.*)
27
28

1 On October 9, 2009, Roth met with Dr. Zaks and his counsel to discuss settlement
2 with the Zaks Entities in the WCAB arbitration. (SF #103.) That day, Roth and Dr. Zaks
3 executed the Settlement Memorandum, which compromised State Fund's claims and
4 defenses to the Zaks Entities' allegedly fraudulent liens. (SF #105.) State Fund asserts
5 that Roth and the Zaks Entities structured the deal to allow for payment on a claim-by-
6 claim basis across about 1,200 claims rather than as a lump sum in order to hide the
7 settlement from Roth's superiors and State Fund's claims department. (SF # 112.)
8

9 The State Fund claims representative that Roth worked with on the WCAB action
10 reported that she was "blind-sided" when she learned that Roth had settled the case. (SF
11 #115.) Everyone else at State Fund who was connected to the case shared her surprise.
12 The Settlement Memorandum required State Fund to pay more than Roth's earlier
13 estimates about the settlement value of the case, and included interest, whereas State
14 Fund's practice was to negotiate settlements in which it would not have to pay interest.
15 (SF ## 113-14.) The Settlement Memorandum also contains no clause releasing State
16 Fund from liability upon its payment of the settled claims, which was a departure from
17 State Fund's standard practice. (SF #118.)
18

19 State Fund further notes that the Settlement Memorandum contained an agreement
20 to settle the claims of Zaks Entity Comprehensive Outpatient Surgery Center (COSC),
21 even though COSC was not a party to the WCAB Action and Roth was not the State
22 Fund Attorney handling COSC's case. (SF # 106.) Other evidence in the record
23 indicates that including COSC in the settlement was a genuine error on Roth's part, as
24 Roth contacted the Zaks Entities' counsel on Sunday, October 11—two days after the
25 Settlement Memorandum was signed—to discuss altering the language in the agreement
26 indicating that the COSC claims would be settled. (Dkt. 300-4, CE Ex. 47.)¹¹
27

28 ¹¹ State Fund acknowledges that Roth called the Zaks Entities' counsel to discuss the issue, but cites an email from Roth to his supervisor describing the COSC issue as evidence that Roth knew there was a

1
2 Roth's behavior around the signing of the Settlement Memorandum was certainly
3 odd: he was evasive with his State Fund colleagues about the status of the litigation and
4 he failed to obtain approval for the settlement from either his own supervisor or State
5 Fund's claims department. But again, the evidence from this period fails to prove that he
6 colluded with the Zaks Defendants. Though Zaks's counsel suggested settling the
7 individual claims at below State Fund's reserves for each claim in order to avoid the need
8 to obtain management approval, the email in which he makes that suggestion shows no
9 sign that he thought structuring a settlement in that manner would violate State Fund
10 policy. (CE Ex. 32.) And other evidence in the record seriously undermines State Fund's
11 allegation that the Zaks Defendants illicitly conspired with Roth to hide the settlement
12 from others at State Fund by entering 1,200 low-dollar settlements: Patrick Christoff,
13 counsel for the Zaks Entities, called State Fund attorney Robert Wilson on October 12,
14 *the very next business day* after the settlement was reached, in order to implement the
15 Settlement Memorandum Roth had signed. (Dkt. 258-25, Christoff Decl. ¶ 10.)¹² This is
16 not the behavior of a party seeking to hide an illicit agreement.

17
18 term pertaining to COSC in the Settlement Memorandum. (SGD ¶ 16, citing CE Ex. 54.) Roth's email,
19 however, corroborates his assertion that he had *not* intended to settle the COSC claims, and had only
20 agreed to insert general language into the agreement indicating that State Fund would use its "best
efforts" when evaluating the liens. (CE. Ex. 54.)

21 ¹² Though Christoff submitted a declaration stating that he made this call to Wilson at State Fund on
22 October 12, 2009, State Fund disputes this fact. State Fund cites the deposition of State Fund attorney
23 Patricia Brown, who testified about how she first became aware that Bruce Roth had entered a
24 settlement with Zaks Entities. (CT. Ex. 4, Brown Dep. at 145:17-147:11.) By her own admission,
25 however, Brown was uncertain who had made the call to Wilson. At her deposition, she stated that
26 "[m]y recollection is not clear in this area," though she believed it was a lien claimant who had
27 contacted Wilson. (*Id.* at 145:20-23.) Brown recalled that she had no direct discussion with this lien
28 claimant, but rather that Wilson told her about his discussion with the lien claimant. (*Id.* at 146:11-22.)
Asked if the person Wilson talked to was Christoff, Brown said, "No, it was a lien—it was a hearing
rep." (*Id.* at 147:5-7.) When asked if she was sure about that, Brown said "Well, it's been a number of
years so I'm not a hundred percent certain. That's my best recollection is it was a hearing rep that he
talked to." (*Id.* at 147:8-11.) State Fund cites nothing other than Brown's uncertain testimony to refute
Christoff's affidavit asserting that he called Wilson on October 12.

1 State Fund also asserts that it had assumed Roth had signed the Settlement
2 Memorandum simply due to his weakness or incompetence, but that when it discovered
3 he was working for Global Holdings—which also employed Dr. Khan—all became clear.
4 But the problem for State Fund is that there is virtually no evidence of concerted action
5 between Roth and any Defendant in this case to exchange Roth’s signing of the
6 Settlement Memorandum for nonparty Sam Solakyan hiring him at Global Holdings.

7
8 In furtherance of its theory, State Fund asserts that Roth told another employee that
9 “some opportunities came up” and that “one door closes and another opens up” before he
10 left State Fund. (SF #135.)¹³ State Fund also notes that Dr. Khan was the Chief Medical
11 Officer at Global Holdings at the time of Roth’s hiring. In an effort to connect the dots
12 between Dr. Zaks (a party to the WCAB action), Dr. Khan (not a party to the WCAB
13 action), and Mr. Solakyan (not a party to either the WCAB action or this action), State
14 Fund notes that Dr. Zaks had made three short-term loans to Dr. Khan totaling \$700,000
15 to purchase real estate in the months leading up to Roth’s hiring¹⁴ and that both Dr. Zaks
16 and Dr. Khan were friends with Solakyan. State Fund has introduced telephone records
17 indicating that from October 2009 through April 2010, Drs. Khan and Zaks had spoken

18
19 A memorandum prepared on October 29, 2009 by State Fund’s outside counsel after interviewing Roth
20 is in accord with Christoff’s testimony. It reads “MONDAY OCTOBER 12: Rob Wilson, the State
21 Fund attorney handling Comprehensive claims gets a call from Patrick Christoff talking about settlement
22 for Comprehensive.” The memo is based on Roth’s testimony during an interview and it is unclear how
Roth came to know about the call. (Dkt. 259-4, Murphy Decl. Ex. 24, Sonnenschein Memo at 14.)

23 Given Brown’s admitted uncertainty about who called Wilson, the lack of deposition testimony from
24 Wilson himself, and the clear testimony of Christoff on the matter, the Court concludes that no
25 reasonable juror would conclude that it was a lien claimant or a hearing officer—as opposed to
Christoff—who called Wilson on October 12, 2009.

26 ¹³ The Court could not locate this language in the exhibit State Fund cited in SF #135, CD Ex. 5 ¶ 12,
27 Ex. L. Nonetheless, for the sake of ruling on this motion, the Court will assume that the statement is in
the record, as it does not alter the Court’s ultimate conclusion.

28 ¹⁴ The Zaks Defendants have introduced evidence that Dr. Khan repaid each loan within weeks. (Dkt.
307-10, Zaks Supp. Decl. ¶¶ 1-5, Ex. 1.)

1 with each other on the phone 30 times, Solakyan and Dr. Zaks had spoken with each
2 other on the telephone 53 times, and Solakyan and Khan spoke with each other on the
3 telephone 276 times. (SF #137.) Nonetheless, “frequent phone calls do not prove a
4 conspiracy, they only prove that individuals were in contact.” *Beaman v. Souk*, 7 F.
5 Supp. 3d 805, 828 (C.D. Ill. 2014). And State Fund has not identified anything
6 incriminating about these calls between avowed friends and business associates.
7

8 Additionally, on April 19, 2010, in the hours before Solakyan hired Roth, Solakyan
9 spoke on the phone multiple times with both Drs. Zaks and Khan. (SF #138.) Left
10 unmentioned in State Fund’s papers is Solakyan’s testimony that he initiated a call to Dr.
11 Zaks right around the time he was planning to hire Roth because he was excited about
12 hiring a “bigshot, as I call them from the insurance side, that would take my company to
13 the next level.” (CT. Ex. 36 at 105:13-18.) Solakyan testified that he called Dr. Zaks
14 because he “was asking a few friends and associates in the industry about their opinions
15 or their advice or their thoughts on the matter.” (*Id.*) Solakyan recalled that Dr. Zaks
16 “was not fond” of Roth and said Roth “was not a great lawyer.” (*Id.* at 106:12-14.)
17 According to Solakyan, Dr. Zaks said “something along the lines of ‘fuck him’” when
18 Solakyan mentioned Roth and “was obviously angry because they were in litigation or
19 something like that at the time.” (*Id.* at 106:15-19.)
20

21 According to Solakyan, Dr. Khan was more equivocal and said something like
22 “whatever you decide, I will support.” (*Id.* at 162:11-12.) Solakyan also testified that
23 “Dr. Khan is not very much into the business side. So unless it’s medicine or MRI
24 machines, [it] doesn’t really flow his juices too much.” (*Id.* at 163:5-6.) Solakyan
25 indicated that he himself was “very excited” about hiring Roth because it would “bring
26 up my street cred to hire Bruce Roth in my company, and [Dr. Khan] was excited for
27 me . . . but I don’t remember any particulars of him saying, Bruce, you know, is great or
28 bad.” (*Id.* at 163:20-21.) At his deposition, Solakyan testified that he hired Roth only

1 because Roth was the “best candidate for the job.” (Dkt. 259-40, Murphy Decl. Ex. 60,
2 Solakyan Dep. at 202:13-15.) He noted that Global Holdings was a small company that
3 would benefit from Roth’s 20 years of experience on the “other side” of workers’
4 compensation litigation. (*Id.* at 92:1-3.) Solakyan stressed that because of Roth’s long
5 experience at State Fund “at the highest levels he knew the rules and regulations of
6 workers’ comp.” (*Id.* at 91:23-92:1.)
7

8 State Fund also asserts that by working for Global Holdings while also drawing his
9 retirement from CalPERS, Roth increased his income by over 99%, from \$9,478 per
10 month to \$18,887.19 per month. (SF #142.) This figure is inflated, however, because it
11 includes Roth’s State Fund pension from CalPERS, which amounts to \$4,325.01 per
12 month. (SF #142.) Presumably Roth would be able to draw his retirement from State
13 Fund whether he worked for Global Holdings, another employer, or simply remained
14 unemployed. State Fund also fails to account for the fact that Roth did not resign from
15 State Fund—he was by all accounts terminated from State Fund several months after he
16 entered into the Settlement Memorandum.
17

18 In the end—after several years of litigation—State Fund has not come forth with
19 evidence that “implies unlawful conspiracy [was] more likely than” innocent or unilateral
20 action. *Aguilar*, 25 Cal. 4th at 857. State Fund has provided no phone logs, emails, or
21 testimony indicating that there was any direct contact between Roth and Dr. Zaks, Dr.
22 Khan, or their counsel that made his decision to enter into the Settlement Memorandum
23 anything other than an arm’s-length transaction. And it has failed to adequately address
24 evidence undermining its theory, such as the call from the Zaks Entities’ attorney to State
25 Fund Attorney Wilson made very soon after Roth signed the 2009 Settlement
26 Memorandum. No reasonable trier of fact could determine that the evidence in the record
27 makes it more likely that Roth entered into the Settlement Memorandum out of a desire
28 for personal gain rather than out of frustration with how the litigation was progressing or

1 a sense that it was the best option available for State Fund. And though Roth's later
2 affiliation with Global Holdings is notable given its connection to Dr. Khan and Sam
3 Solakyan's friendship with both Drs. Zaks and Khan, that information is hardly
4 surprising: all four men worked in the same industry, Roth had been terminated from
5 State Fund, and Roth needed a job. Furthermore, State Fund has not pointed to any
6 evidence in the record that would call into question Solakyan's apparent excitement about
7 the prospect of hiring Roth. As Solakyan noted, Roth was an industry veteran with an
8 inside perspective on the claims process. There is no indication that he was unqualified
9 for the job with Global Holdings, that his salary was higher than the salary of others hired
10 to perform a similar role, or that he would have needed to resort to illicit means to secure
11 a job like the one he landed at Global Holdings. On the contrary, the available evidence
12 indicates that Roth did exactly what many people would do upon being terminated from a
13 government job in the insurance industry—he looked for a comparable job in the private
14 sector and found one for which he was qualified.

15 16 **c. Connivance**

17
18 A party's connivance is a valid basis to rescind an agreement. Cal. Civ. Code
19 § 1689(b)(2). Under California law, connivance exists where a defendant takes
20 advantage of a third party's fraud or duress to enter into an agreement with an innocent
21 party. *Leeper v. Beltrami*, 53 Cal. 2d 195, 206 (1959). State Fund asserts that when Dr.
22 Zaks executed the Settlement Memorandum, "he knew that Roth was acting without
23 authority, and that State Fund would not have approved it." (SF # 110.) According to
24 State Fund, after State Fund asserted that Roth had no authority to enter into the 2009
25 Settlement Memorandum, Dr. Zaks aggressively moved to enforce it based on Roth's
26 "ostensible authority," despite knowing full well at the time the Settlement Agreement
27 was signed that Roth lacked the authority to execute it—behavior which would qualify as
28 connivance.

1 State Fund's allegation is not, however, supported by the underlying record. Roth
2 himself emailed the Zaks Entities' counsel on October 6, three days before he entered
3 into the Settlement Memorandum, to inform them that "State Fund has provided me with
4 the authority to propose the following as a way to avoid continuing the litigation and
5 recons given the WCAB past delays that will extent [sic] the case well beyond my
6 retirement date," followed by a list of proposed settlement figures that served as a basis
7 for the October 9, 2009 settlement negotiation. (CE Ex. 43.) Roth's statement about
8 being in contact with State Fund concerning settlement figures conveyed the message that
9 Roth was in contact with his superiors at State Fund, that his superiors knew the status of
10 the litigation, and that Roth had obtained authority to settle the case. There is no
11 evidence that Roth ever indicated to any of the Zaks Defendants that he did not have
12 authority to settle the case on the terms under which it was ultimately settled, or that he
13 had structured the settlement in a way that State Fund would not permit. Because the
14 record does not support the theory that Zaks knew Roth lacked settlement authority, State
15 Fund's attempt to rescind the Settlement Agreements based on Zaks's connivance must
16 fail.

17 18 **4. Conclusions Regarding the Zaks Defendants** 19

20 The 2010 Settlement Agreements remain binding on the Zaks Entities and State
21 Fund. State Fund has failed to prove the extrinsic fraud or connivance necessary to
22 warrant rescission of those agreements, which were freely entered into by the parties with
23 no involvement from Roth and while State Fund had in its possession all of the evidence
24 about the Zaks Defendants' allegedly fraudulent lien claims. After several years of
25 discovery, State Fund has failed to obtain sufficient evidence to support either its theory
26 that the 2009 Settlement Memorandum was the result of a quid pro quo between Roth
27 and any defendant in this case, or that Dr. Zaks had a reason to know Roth lacked
28 settlement authority to enter into the 2009 Agreement. Accordingly, the Settlement

1 Agreement is enforceable and State Fund released the Zaks Defendants from fraud and
2 civil RICO claims which it had against them on that date. And as discussed here, State
3 Fund has not provided sufficient evidence of any activity by the Zaks Defendants that
4 would give rise to a fraud or civil RICO claim against them after the 2010 Settlement
5 Agreements were signed. Accordingly, the Zaks Defendants' motion for summary
6 judgment is GRANTED.

7 8 **B. Bruce Roth's Motion for Summary Judgment**

9
10 State Fund's civil RICO allegations against Roth are based on Roth's alleged
11 collusion and quid pro quo with the Zaks Defendants: Roth's signing of the 2009
12 Settlement Memorandum in exchange for a job with Global Holdings. But as discussed
13 in detail with respect to the Zaks Defendants' motion, there is not sufficient evidence in
14 the record of concerted action between Roth and any defendant to support State Fund's
15 allegation that Roth colluded with anyone. Without this concerted action, the claims
16 against Roth must fail. Accordingly, Roth's motion for summary judgment is
17 GRANTED.

18 19 **C. The Khan Defendants' Motion for Summary Judgment**

20
21 Having failed to provide sufficient evidence of Roth's involvement in the alleged
22 RICO conspiracy illicit enterprise, or any fraud on the part of the Zaks and Khan
23 Defendants with respect to Roth's hiring at Global Holdings, it is not apparent how State
24 Fund could maintain its RICO claims against the Khan Defendants. Dr. Khan's
25 involvement in Roth's hiring and Roth's involvement in the alleged fraudulent enterprise
26 is at the center of State Fund's theory of this case. Without Roth, State Fund is now left
27 with (1) allegations that Zaks and Khan created an enterprise to file fraudulent medical
28 claims with it from 2002 to approximately 2006, when State Fund first alleged before the

1 WCAB that the Zaks Entities' and Khan Entities' liens were fraudulent, and (2) its
2 assertion that the Khan Defendants committed fraud by filing a federal case in 2011,
3 *Physicians Mobile Medical Group v. State Compensation Insurance Fund*, Case No.
4 SACV-11-01282, in which they attempted to collect on some claims they allegedly sold
5 to a third-party collection firm in 2009. (Pl.'s Opp'n Br. at 30-31.)

6
7 With respect to the claims running from 2002 to 2006, the Khan Defendants have
8 adopted the Zaks Defendants' arguments, made in a separate motion, (Dkt. 262), that
9 State Fund's claims that accrued prior to 2008 are barred by the 4-year statute of
10 limitations for RICO claims. (Dkt. 274-1, Khan Defs.' Br. in support of Mot. Summ. J. at
11 19.) In response to this statute of limitations argument, State Fund asserts that its claims
12 must be equitably tolled for the duration of the time they were before the WCAB. (Dkt.
13 288, Pl.'s Opp'n to Zaks Defs.' Statute of Limitations Mot. at 5-8.) The Ninth Circuit
14 has, however, refused to accept this tolling argument in very similar circumstances
15 involving the assertion of a RICO claim outside of the four-year statute of limitations.
16 *Grimmett v. Brown*, 75 F.3d 506, 515-16 (9th Cir. 1996). In *Grimmett*, the plaintiff
17 argued that RICO's four-year statute of limitations was tolled while she pursued a
18 narrower version of the same RICO theory in bankruptcy court. *Id.* The Ninth Circuit
19 reasoned that because a bankruptcy court's primary jurisdiction is not RICO claims,
20 federal courts and bankruptcy courts are "more properly considered 'parallel avenues of
21 relief.'" *Id.* The plaintiff could have simultaneously pursued her RICO claim in federal
22 court and because she did not do so, the bankruptcy proceeding did not toll her RICO
23 claim. *Id.*; see also *Conley v. Int'l Bhd. Of Elec. Workers, Local 369*, 810 F2d 913, 915
24 (9th Cir. 1987) ("[e]quitable tolling is most appropriate when the plaintiff is required to
25 avail himself of an alternate course of action as a precondition to filing suit"). Like the
26 *Grimmett* plaintiff, State Fund could have simultaneously pursued its RICO claim in
27 federal court while litigating the WCAB proceeding. Equitable tolling therefore offers it
28

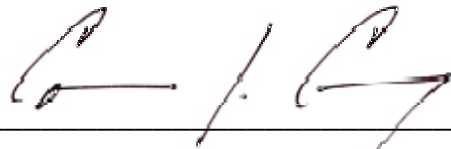
1 no relief here and its claims running back to the Khan Defendants' actions from 2002 to
2 2006 are time-barred.¹⁵

3
4 And alleged fraud related to the 2011 lawsuit involves the Khan Entities' decision
5 to pursue claims it had sold to a third party—it does not concern concerted action
6 between the Khan Defendants and Roth or the Zaks Defendants. State Fund's allegations
7 in this case assert an enterprise between the Khan Defendants, the Zaks Defendants, and
8 Roth, not simply concerted action amongst the Khan Defendants to collect on claims they
9 no longer owned. State Fund cannot keep its RICO claims alive as pled based solely on
10 the Khan Defendants' conduct in 2011.

11
12 **V. CONCLUSION**

13
14 Accordingly, the Defendants' motions for summary judgment are GRANTED.¹⁶

15
16 DATED: March 8, 2016

17
18
19 

20 CORMAC J. CARNEY

21 UNITED STATES DISTRICT JUDGE

22
23
24 ¹⁵ The Ninth Circuit has applied the injury discovery rule to RICO claims. *Pincay v. Andrews*, 238 F.3d
25 1106, 1109 (2001). Under that rule, the statute of limitations is tolled until the plaintiff knows or should
26 have known of the injury underlying the cause of action. *Id.* But here, State Fund alleged fraud against
both the Zaks Entities and the Khan Entities in 2006, so the injury discovery rule cannot extend the
RICO statute of limitations until 2012, when this action was filed.

27 ¹⁶ Because the Court has granted summary judgment on all claims with respect to all defendants, it
28 hereby DENIES as moot the Zaks Defendants' outstanding Motion to Strike State Law Fraud Claim
Pursuant to California's Anti-SLAPP Statute, (Dkt. 261), and the Zaks Defendants' Motion for
Summary Adjudication as to the Issue of Damages Barred by the Statute of Limitations. (Dkt. 262.)